



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,970	08/24/2000	Thomas A. Cain	5019.7	4449

23559 7590 07/18/2003

MUNSCH, HARDT, KOPF & HARR, P.C.  
INTELLECTUAL PROPERTY DOCKET CLERK  
1445 ROSS AVENUE, SUITE 4000  
DALLAS, TX 75202-2790

EXAMINER

HARRY, ANDREW T

ART UNIT	PAPER NUMBER
----------	--------------

2686

DATE MAILED: 07/18/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

10

**Office Action Summary**

Application No.

09/645,970

Applicant(s)

CAIN ET AL.

Examiner

Andrew T Harry

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection. The Examiner still feels that the rejection of the original set of claims in view of *Sharma* is valid, but based upon the Applicant's amendment the Examiner is forced to find new prior art and alter the grounds of his rejection.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 5-7, 9-10, 11, 15-17, 19-21, 24-26 and 28-29 are rejected under 35**

**U.S.C. 102(e) as being anticipated by *Eriksson et al.*, U.S. Patent 6,385,449 ("*Eriksson*").**

As pertaining to **claims 1, 11, and 21**, *Eriksson* teaches an apparatus and method for dynamically balancing call processing tasks among a plurality of call processing nodes in a telecommunications switch (see *Eriksson*, abstract), comprising:

a plurality of call processing nodes (see *Eriksson*, Fig. 2);

at least one incoming call receiving node (see *Eriksson*, col. 3, lines 1-16);

the plurality of call processing nodes each:

periodically updating a node occupancy value at each of the plurality of call processing nodes (see *Eriksson*, col. 3, lines 51-60);

Art Unit: 2686

communicating the respective node occupancy value of each call processing node to at least one work originator node operable to receive incoming calls in an open-loop manner (the information was not requested) (see *Eriksson*, col. 4, lines 15-33);

the at least one incoming call receiving node;

storing the node occupancy values of the plurality of call processing nodes at the at least one work originator node (see *Eriksson*, col. 4, lines 35-67, clearly the status message is stored by the call receiving node so that some algorithm can be run to determine whether the call should be moved to an alternative cell);

selecting, by the at least one work originator node, a call processing node to process the incoming call in response to the node occupancy values of the call processing nodes (see *Eriksson*, col. 4, lines 35-67).

As pertaining to **claims 5, 15, and 24**, in *Eriksson's* method and apparatus communicating the respective node occupancy value comprises:

inserting the respective node occupancy value into a message header of an existing call processing message (see *Eriksson*, col. 4 lines 15-34, clearly if the message is to be sent periodically then the message "exists" in the system); and

sending the message to the work originator node (see *Eriksson*, col. 4 lines 14-67).

As pertaining to **claims 6, 16, and 25**, in *Eriksson's* method and apparatus communicating the respective node occupancy value comprises sending a call processing message containing the respective node occupancy value as part of existing call processing message traffic (see *Eriksson*, col. 4 lines 14-67, *Eriksson* indicates that this exchange takes place as a normal occurrence, thus being "existing" traffic).

Art Unit: 2686

As pertaining to **claims 7, 17, and 26**, in *Eriksson's* method and apparatus communicating the respective node occupancy value comprises:

inserting the respective node occupancy value and a sender ID into a message header of a call processing message (see *Eriksson*, col. 4 lines 14-67, clearly a sender ID must be enclosed in the transmitted message so that one base station controller (BSC) knows where the message came from, and the message is send as part of an “existing” handover type of request between stations); and

sending the message to the work originator node (see *Eriksson*, col. 4 lines 14-67).

As pertaining to **claims 9-10, 19-20, and 28-29**, selecting a call processing node in *Eriksson's* method and apparatus comprises:

determining a subset of call processing nodes having lowest node or third node occupancy values; and

randomly selecting a call processing node from the subset node (see *Eriksson*, col. 3, lines 27-28 and col. 4 lines 14-67, *Eriksson* clearly shows that his device may be implemented with more than two BSC and therefore the nodes with the greatest amount of free occupancy are selected and if two nodes have the same values it's clear that one of the two or three with the lowest occupancy values would be randomly selected).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2686

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-4, 12-14, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Eriksson* and in further view of *Sharma*.**

While *Ericksson* teaches that his device is capable of calculating a resource utilization number and transmitting it at periodic intervals or when required (see *Eriksson*, col. 3, line 61-col. 4, line 5), he fails to provide specific details regarding how the resource utilization number is calculated. *Sharma* teaches that using a combination of a percentage of available processing capacity of the call processing of the call processing node, length of its work queue, and processing speed, the node occupancy value is calculated and periodically updated by each of the plurality of call processing nodes. It would have been obvious to one of ordinary skill in the art at the time of the invention to add *Sharma's* method of calculating the resource utilization number to *Eriksson's* system and method so that *Eriksson's* would have been able to use these specific attributes to calculate an accurate number to reflect the capacity of the BCSs on his system. This would have allowed *Ericsson's* method to have an accurate method to determine it's resource utilization number. It would have also been likely that *Eriksson* had intended to use a very similar method in his system but describing the calculation in such detail would have been out of the scope of his specification.

**Claims 8, 18, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Eriksson*.**

As pertaining to **claims 8, 18 and 27**, *Eriksson's* method and apparatus does not explicitly state that the storing of the node occupancy of the plurality of call processing nodes

Art Unit: 2686

comprises storing the node occupancy value in a table indexable by the sender ID. However *Eriksson*'s disclosure does indicate that the node occupancy value is stored for each node and that it is somehow tied to the ID so that in the process of selecting the appropriate node to use includes the node occupancy value and some identification for each node (see *Eriksson*, col. 4, lines 15-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to know that, even though it is not explicitly disclosed by *Eriksson*, that the storing of the node occupancy of the plurality of call processing nodes comprises storing the node occupancy value in a table indexable by the sender ID. This would have been an obvious way for *Eriksson* to store the node occupancy value and to index that value to the identification of the particular nodes from which it could select.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2686

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

B. Budka et al., U.S. Patent 6,577,871 teaches a technique for effectively managing processing loads in a communications arrangement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T Harry whose telephone number is 703-305-4749. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703-305-4379. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

ATH  
July 10, 2003

*Marsha D Banks-Harold*  
MARSHA D. BANKS-HAROLD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600